In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1548

M. MURRAY SCHECHTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Southern District of Florida, petitioner was convicted of willfully attempting to evade income taxes for the years 1967 and 1968, in violation of 26 U.S.C. 7201. The trial judge imposed a sentence of four years' imprisonment but provided, pursuant to 18 U.S.C. 3651, that petitioner be confined in a jail-type institution for six months with the execution of the remainder of the sentence to be suspended and petitioner placed on probation for three years.[1] Petitioner was also fined a total of $20,000. The court of appeals affirmed (Pet. App. 1-6).

[1] Payment of the taxes due for 1967 was made a condition of probation (Tr. 220). "Tr." refers to the transcript of trial proceedings.

Petitioner's only contention here apparently is that the trial judge, in determining that the underreporting of petitioner's income tax liability was willful, gave insufficient weight to the fact that petitioner had voluntarily permitted his tax records to be inspected by Internal Revenue Service agents.

Petitioner conceded at trial that he had failed to report all his income for the years in question (Pet. 5). The issue before the trial court was whether petitioner's underreporting was willful. As the opinion of the court of appeals illustrates (Pet. App. 2-5), there was ample evidence to support the trial court's finding of willfulness.

Petitioner, however, apparently contends that the trial judge erroneously believed that petitioner had refused requests to furnish his tax records to investigating Internal Revenue Service agents and had been compelled to furnish the records against his will; petitioner in effect argues that the trial judge, on the basis of this belief, inferred a knowledge of guilt, and therefore willfulness, on petitioner's part. There is no factual foundation for petitioner's argument. To the contrary, testimony at trial, elicited both by the prosecution (Tr. 78-79) and the defense (Tr. 86), established that petitioner had cooperated with the investigation and had voluntarily furnished his tax records to the investigating agents. The trial judge did indicate a belief that the Internal Revenue Service agents had a right to look at petitioner's records (Tr. 206), but he did not suggest any misunderstanding concerning the voluntary nature of petitioner's furnishing of the records. Moreover, in summarizing the grounds for his finding of willfulness, the trial judge discussed only the unlikelihood that petitioner's substantial underreporting of income could

have been accidental and did not refer to any lack of cooperation by petitioner.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1973.

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[2] The trial judge stated (Tr. 218-219):

> Basically, in adjudging you guilty, it was difficult for me to believe that you could have innocently and inadvertently, in the preparation of your return, made 31 errors in one year and 34 errors in another year and, as I recall the evidence, all except possibly two were in your favor, and it totaled up to somewhere in the neighborhood as claimed by the Government of some $60,000.
>
> In reviewing the evidence, as I say, and in reviewing the records, it was just difficult for me to believe that they could be innocent and inadvertent errors. I fully understand and realize the evidence with respect to the adding machine and all those things. I fully realize that other than these two years there hasn't been any criticism by anybody.